case. The terms of section 7(5) of the Civil Law Ordinance are absolute and contain no exceptions. They are that "such action shall be brought within three years after the death of the deceased person". It is true that, as Goddard L.J. said with reference to the corresponding section of the English Act, the section "merely prescribes a period of limitation" (*Lubovsky* v. *Snelling* [10]) and that it does not contain a condition precedent or anything of the sort. Nevertheless the period is absolute. There is no room for doubt as to when it begins to run. It runs from the death of the person of whose support the plaintiff has been deprived. The cause of action arises on death (see *Seward* v. *"Vera Cruz"* [11]). There are none of the saving provisions in favour of a plaintiff that were found in the Statute of James I and are to be found to-day in the English Limitation Act of 1939 or our own Limitation Ordinance of 1953. There is no question of infancy or disability or anything of the sort or of acknowledgment. The only way in which the consequences of the section could be avoided would be if there had been some agreement not to plead the statute and this would constitute a new cause of action (*Lubovsky* v. *Snelling, supra*) and would require to be set out in the statement of claim.

Finally, there can be no question of importing into the matter any of the saving provisions of the Limitation Ordinance by any process of construction for by section 3 of that Ordinance it "shall not apply to any action....for which a period of limitation is prescribed by any other written law."

It is true that an application such as was made in the present case must be most carefully scrutinised and the powers of the court under Order 25 rule 4 must be exercised with the greatest care. As was said by Lindley L.J. in the case of *Kellaway* v. *Bury*:—[12]

"That is a very strong power, and should only be exercised in cases which are clear and beyond all doubt. It is not because the statement of claim is demurrable from a pleader's point of view that the court is justified in stamping the action out. It must be only be demurrable, but the court must see that the plaintiff has got no case at all, either as disclosed in the statement of claim, or in such affidavits as he may file with a view to amendment."

Nevertheless in my view the present case was a proper case for the exercise of these powers. Counsel has suggested no ground on which the consequences of limitation could be avoided. I trust it is not unkind to suppose that what his argument amounted to was that he was entitled to time to think of something. For myself I have been able to think of nothing and can see no grounds for supposing that any prolongation of counsels' intellectual labours would produce a more substantial result.

I would dismiss the appeal with costs.

Barakbah C.J. (Malaya) and Tan Ah Tah F.J. concurred.

Appeal dismissed.

Solicitors: *Sault, Keith Sellar & Co.; N. Ramachandran.*

COMPTROLLER OF INCOME TAX v. YAN TAI MIN

[O.C.J. (Ali J.) December 16, 1964]

[Ipoh — Perak Civil Suit No. 30 of 1964]

Probate and Administration — Grant of letters of administration — Whether order granting person administration makes him an administrator with power to sue and be sued — R.S.C. 1957, O. 16 rr. 8 and 16 — Probate and Administration Ordinance, 1959.

In this case the defendant who had entered conditional appearance applied to strike out the writ of summons on the ground that the action brought against him as administrator was incompetent. The defendant had obtained an order for the grant of letters of administration to him of the estate of Yan Koon Wing deceased but he had not extracted the grant.

Held: it is only on extracting the grant of a letter of administration that a person can be said to be duly clothed with a representative character and to have acquired a title to the estate so as to make him an administrator within the meaning of O. 16 r. 8 of the Rules of the Supreme Court and therefore in this case the defendant was not the administrator and the action could not be brought against him as administrator.

Cases referred to:—

(1) *Chia Teck Liang* v. *Tan Soo Khiang* [1936] M.L.J. 185.

(2) *P. Govindasamy Pillay & Sons Ltd.* v. *Lok Seng Chai* [1961] M.L.J. 89.

(3) *Ingall* v. *Moran* [1944] 1 K.B. 160.

MOTION.

Au Ah Wah (Federal Counsel) for the plaintiff.

M. Mahalingam for the defendant.

Ali J.: In this notice of motion, which was filed on the 17th August, 1964, the defendant, who had entered conditional appearance to the writ, applies to strike out the writ of summons on the ground that the action brought against him as administrator was incompetent.

It was common ground that in Petition No. 182 of 1961 the defendant applied for the grant of administration and on the 18th October, 1961, obtained an order for the grant of administration to him of the estate of Yan Koon Wing, deceased. But up to the date of the writ he had not extracted letters of administration. It is the defence contention that the defendant is not the administrator of the estate until he has been issued with letters of administration. This raises the question whether the order granting him administration dated the 18th October, 1961, was sufficient to render the action by the

plaintiff incompetent. The law on this point, in my view, is beyond doubt. In every petition for administration the only order made by the court is for the grant of administration. The court does not appoint an administrator but in effect directs that letters of administration be issued to him. A similar question arose in *Chia Teck Liang* v. *Tan Soo Khiang*,[1] where Mills J., construing section 70 of the Probate & Administration Enactment of Johore, held that the order of court granting administration did not constitute a grant. In terms of the definition of the word "administration" in section 2 of the Probate & Administration Ordinance No. 35 of 1959 it can similarly be construed that the order of the 18th October, 1961, did not constitute an administration so as to vest in the defendant the authority to act as administrator in respect of the estate. In *P. Govindasamy Pillay & Sons Ltd.* v. *Lok Seng Chai & Ors.*,[2] Ismail Khan J. dealing with the same question, held at page 91 that, in his opinion, "it is only on extracting the grant of letters of administration that the petitioner can be said to be duly clothed with a representative character and to have acquired a title to the estate." It must, therefore, be held that the order granting the defendant administration did not make him an administrator within the meaning of rule 8 of Order 16.

The necessary consequence of the plaintiff's action in issuing the writ against the defendant is the next question to be considered. It had been held in *Ingall* v. *Moran*,[3] that an administrator suing before being issued with letters of administration has no title to sue and the action commenced by him was incompetent. This decision was followed in *P. Govindasamy Pillay & Sons Ltd.* v. *Lok Seng Chai & Ors.*, *supra*, by Ismail Khan J. It may be argued that in that case the court was merely considering the position of a person suing as a plaintiff and may, therefore, be distinguished here on the ground that the position is in reverse as the defendant is the person who is being sued as administrator. To that I can only say that what is sauce for the the goose must also be sauce for the gander. In the circumstances of the present case it must similarly be held that the action against the defendant was incompetent since its inception as the writ was clearly a nullity. In this way, notwithstanding the fact that the defendant had obtained an order for the grant of administration on the 18th October, 1961, and would, when issued with letters of administration, be clothed with a representative character, it cannot alter the fact that the proceeding against him was incompetent from the outset. There can, therefore, be one consequence only and that is that the action must be dismissed with costs. In this connection it is perhaps necessary to recall the words of Scott L.J. in *Ingall* v. *Moran*, *supra*, at page 164:—

> "It is true that when he (the plaintiff) get his title by the grant of administration he *prima facie* became entitled to sue, and could then have issued a new writ, but that was all. An application by him to treat the original writ of September 17 as retrospectively valid from that date would have been refused by the court, not only because it might prejudice existing rights of defence, but because it would not be permissible under the Rules of the Supreme Court or the Judicature Acts. The old writ was, in truth, incurably a nullity. It was born dead, and could not be revived."

Luxmore and Goddard L.JJ. concurred with Scott L.J. on this point and the decision to dismiss the plaintiff's action was unanimous. The only difference in the present case is that the plaintiff's action fails not because he himself had no title, as in *Ingall* v. *Moran*, *supra*, but because the defendant did not have any title to be sued as administrator. The plaintiff's action is accordingly dismissed with costs.

Lastly, it may be necessary to add a few words with regard to the motion filed by the plaintiff on the 8th October, 1964. The plaintiff was here asking for certain orders which would enable him to sue the defendant or the official administrator in respect of the estate. The fact that he has found it necessary to seek these orders is indicative of the uncertainty of the plaintiff's mind with regard to the propriety of the action which has been brought against the defendant. However, I need only say that orders of the nature asked for by the plaintiff are not normally given in interlocutory applications such as this but are usually sought by way of originating summons before the action is commenced. Rule 46 of Order 16 of the Rules of the Supreme Court has no relevance to the circumstances of the present case. For these reasons I make no order on the application and the costs thereof.

Action dismissed.

Solicitors: *Maxwell, Kenion, Cowdy & Jones.*

GIAN SINGH & CO. LTD. v. SUPER SERVICES

[O.C.J. (Winslow J.) December 16, 1964]

[Singapore — Summons in Chambers No. 1176 of 1964 in Suit No. 1588 of 1962]

Practice & Procedure — Time — Delay of one year — No proceeding in cause or action for one year — Requirement of a month's notice — Irregularity which can be condoned — R.S.C. 1934, O. LXI r. 5 — Meaning of "a proceeding in any cause or matter".

The plaintiffs issued a specially indorsed writ on December 11, 1962, claiming the sum of $18,386.78 due to them on a current account from the defendants. The defendants entered an appearance on December 28, 1962, and on January 23, 1963, Messrs. Francis & Co. entered their names as solicitors for the defendants and served the notice of appointment on Mr. L. A. J. Smith